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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
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11 FERREOL CARDENAS, SR.,
12 Individually, and as the Personal
13 Representative for FERREOL
14 CARDENAS, JR., Deceased, and
15 ROSA CARDENAS,,
16

17 Plaintiffs,

18 v.

19 CITY OF MANHATTAN BEACH,
20 MANHATTAN BEACH POLICE
21 OFFICER MICHAEL LYNCH (Serial
22 No. 313), MANHATTAN BEACH
23 POLICE OFFICER B. MUZATKO
24 (Serial No. 342), and Does 1 through
25 10, inclusive,
26

27 Defendants.
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Case No. 2:15-CV-1469-JPR
[Hon. Mag. Judge Jean P. Rosenbluth]

**ORDER FOR DISMISSAL OF
CLAIMS IN PART**

Complaint Filed: 03/01/2015
Trial Date: N/A

22 PURSUANT TO THE STIPULATION OF THE PARTIES, and pursuant to the
23 Court's inherent and statutory authority, including but not limited to the Court's
24 authority under the applicable Federal Rules of Civil Procedure and the United States
25 District Court, Central District of California Local Rules; after due consideration of
26 all of the relevant pleadings, papers, and records in this action; and upon such other
27 evidence or argument as was presented to the Court; Good Cause appearing therefor,
28 and in furtherance of the interests of justice,

IT IS HEREBY ORDERED that:

1. The Court hereby **dismisses with prejudice** plaintiffs' Fifth Cause of Action – a **Bane Act claim** brought pursuant to Cal. Civ. Code § 52.1 by plaintiffs FERREOL CARDENAS, SR., Individually, and as the Personal Representative for FERREOL CARDENAS, JR., Deceased, and ROSA CARDENAS against defendants the CITY OF MANHATTAN BEACH, Manhattan Beach Police Officer MICHAEL LYNCH, Manhattan Beach Police Officer B. MUZATKO, and defendants Does 1-10 – **in its entirety** and as to all defendants to this action.

2. The Court hereby **strikes** the following language from operative complaint (¶ 57, page 12, lines 1-5): STRIKING "Defendant City of Manhattan Beach, through the Manhattan Beach Police Department, breached its mandatory duty by failing to adequately train and supervise its police officers in the risks of and use of ECDs, as well as the use of force with respect to the restraint, apprehension and detention of individuals such as the Decedent."

3. To the extent that plaintiffs' Seventh Cause of Action – a **Police Negligence** claim brought pursuant to California law by plaintiffs FERREOL CARDENAS, SR., Individually, and as the Personal Representative for FERREOL CARDENAS, JR., Deceased, and ROSA CARDENAS against defendants the CITY OF MANHATTAN BEACH ("City"), Manhattan Beach Police Officer MICHAEL LYNCH, Manhattan Beach Police Officer B. MUZATKO, and defendants Does 1-10 – alleges a claim for *direct* negligence by the CITY OF MANHATTAN BEACH, a public entity (*e.g.*, any claim for negligent supervision, hiring, training, investigation, or discipline), the Court hereby **dismisses such claim with prejudice**.

4. However, nothing in the parties' Stipulation or in this Order shall be construed as any dismissal of defendant CITY OF MANHATTAN BEACH from the Seventh Cause of Action on the basis of *vicarious* liability for the alleged negligence of its defendant peace officers. Nothing in this Stipulation or any associated Order shall be construed as any dismissal of plaintiffs' Fourth Cause of Action against

1 defendant City – a *Monell* Claim brought pursuant to 42 U.S.C. § 1983 against
2 defendant City regarding alleged constitutionally deficient supervision, training,
3 investigation, and discipline regarding the use of force in such a manner as to result in
4 the use of excessive force on plaintiffs' Decedent.

5 5. Furthermore, plaintiffs and defendants mutually waive and release all
6 such aforementioned claims – including all claims for liability or damages or
7 otherwise by any of the plaintiffs against any of the defendants or their agents or
8 employees – and mutually waive and release all costs, court fees, and attorneys' fees
9 arising out of this litigation between these parties thereto as to the aforementioned
10 dismissed claims.

11 6. The provisions of the parties' Stipulation and this Order shall be in effect
12 until further applicable Order of the Court.

13 **IT IS SO ORDERED.**

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15 Dated: September 8, 2015

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UNITED STATES DISTRICT JUDGE

1 Respectfully Submitted By:

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